UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTERS OF:	)	
	)	
Kerr-McGee Oil & Gas Onshore, LP	)	**Docket No. CWA-08-2006-0041**
	)	**CWA-08-2006-0042**
DINSDALE 1-3 facility	)	**CWA-08-2006-0043**
KOESTER 13, 14, 23-33 facility	)	
PEPPLER 3-36 facility	)	
	)	
Respondent.	)	
	)	

ORDER TO SHOW CAUSE

On September 22, 2006, three Expedited Consent Agreements ("CA") were submitted by the parties to the Presiding Officer for approval pursuant to 40 C.F.R. § 22.18. Kerr-McGee Oil & Gas Onshore, LP is the Respondent in all three CAs. U.S. EPA ("Complainant" or "Agency") alleges violations occurred at three separate locations owned by Respondent: two facilities in Weld County, Colorado and one facility in Stark County, North Dakota. The alleged violations in the three CAs consist of failure to comply with the oil pollution prevention (SPCC) regulations promulgated under 33 U.S.C. §1321(j) and/or discharges of oil into or upon navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health, welfare or environment pursuant to 33 U.S.C. §1321(b)(3) and (b)(6) of the Clean Water Act. The parties have asked the Presiding Officer to sign a Final Order for each of the three CAs ratifying the parties' agreements.

Complainant used the Agency's Expedited Settlement Program to resolve the three CA's at issue. U.S. EPA policy, "Use of Expedited Settlements to Support Appropriate Tool Selection," dated December 2, 2003, outlines when expedited settlements can be a useful enforcement tool for the Agency. The policy notes at p. 2, that expedited settlements are "...generally appropriate for minor, easily correctable violations and provides a discounted, non-negotiable settlement offer in lieu of more formal, traditional administrative penalty actions." EPA considers the oil program, specifically SPCC violations, and in certain instances, oil spills, to be conducive to expedited settlements. A rationale for the use of expedited agreements includes, "[w]hen used appropriately, expedited settlements result in regulated entities returning to compliance and paying penalties more quickly than would be accomplished through issuance of a non-expedited administrative penalty order." (See, p. 3 of Expedited Settlement Policy). Furthermore, the policy states "while traditional administrative actions for penalties may take more than a year to resolve, a typical expedited settlement

will resolve a regulated entity's penalty liability and ensure compliance within a few months of EPA's discovery of the violation." (See, p. 3 of Expedited Settlement Policy).

The policy specifically outlines that upon receipt of the expedited settlement agreement, Respondent has 30 days to sign and return the agreement with the ability to receive another 30 day extension, at the discretion of EPA, to achieve compliance. If Respondent does not "sign and return the Expedited Settlement Agreement with payment of the penalty amount within 30 days....the Expedited Settlement Agreement is automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the above or any other violations." (See, p. 20, Instructions, of Expedited Settlement Policy). This short-term offer to settle seems to support the spirit of the policy and suggests that the Agency would provide adequate notice of the violations to the Respondent in order to avail the parties of the expedited settlement program.

Of importance to this matter is section IV of the Expedited Settlement Policy, Circumstances in Which an Expedited Settlement Approach is Inappropriate. Page 10, of the policy clearly sets forth that expedited settlements are not appropriate for a repeat violator. Repeat violator is defined as:

> a violator, who in the past five years, has had the same or closely-related violations: 1) at the facility where the instant violation occurred; or 2) at multiple facilities, i.e., three or more facilities, under ownership, operation, or control of the violator. The five-year period begins to run when a federal, state, tribal, or local government has given the violator notice of a specific violation, without regard to when the original violation cited in the notice actually occurred.

(See, p. 10 of Expedited Settlement Policy). The record before me does not indicate whether any notice of the violations were given to Respondent. The record also does not indicate when Respondent received the CAs. These unanswered questions, as well as others, raise concerns for this Tribunal regarding the Complainant's use of expedited consent agreements to resolve these three actions.

According to the CAs, the spill violations occurred on the following dates[1]:

1) **DINSDALE 1-3 facility**	**November 9, 2005**
2) **KOESTER 13, 14, 23-33 facility**	**December 25, 2003**
3) **PEPPLER 3-36 facility**	**January 28, 2003**

At first blush, the use of an expedited consent agreement, as envisioned under the Expedited Settlement Policy, to resolve the three matters before me is prohibited based on the "repeat violator" definition in the policy. However, Respondent signed all three agreements in good faith and should not be unduly disadvantaged by the Agency's actions without an opportunity to be heard. This Presiding Officer hesitates to rule on the

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[1] The two consent agreements with SPCC violations provide no information on the dates the violations occurred.

appropriateness of using expedited consent agreements to resolve these actions, given the limited information before me, without first hearing more from the parties.

Therefore, I am allowing the parties to provide written argument as to why these three CAs should be approved and a Final Order signed pursuant to 40 C.F.R. § 22.18. This is an opportunity for each party to persuade this court on the efficacy of moving forward with the CAs.

In addition, I would like each party to address the following:

Complainant

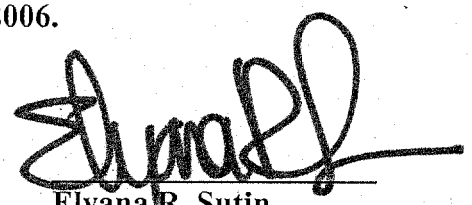
1) The justification to use the Expedited Settlement Policy to resolve these three CAs including an explanation as to why Respondent is not a repeat violator as defined by the policy;
2) The date each CA was sent to Respondent;
3) Whether any extensions of time were given to Respondent to sign the CAs, the length of the extension and the basis for the extension.

Respondent

1) The date each CA was received by Respondent;
2) Respondent's knowledge of the Expedited Settlement Policy prior to signing the three CAs;
3) Respondent's position on why the expedited consent agreements are appropriate in these three matters.

Accordingly, pursuant to 40 C.F.R. §22.4(c)(10) and §22.5(c) a written memorandum or brief shall be filed with the Presiding Officer by October 13, 2006.

SO ORDERED this 29th Day of September, 2006.



Elyana R. Sutin
Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:	)	
	)	
Kerr –McGee Oil & Gas Onshore LP	)	
	)	**EXPEDITED CONSENT AGREEMENT**
	)	
Respondent.	)	**DOCKET NO.: CWA-08-2006-0041**

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, Kerr –McGee Oil & Gas Onshore LP, by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on or about November 9, 2005, and violations of the Spill Prevention Control and Countermeasures (SPCC) Plan regulations, and agree as follows:

The Clean Water Act (the Act), as amended, authorizes the Administrator of EPA to assess administrative penalties against any person who discharges oil into or upon the navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health or welfare or environment of the United States, 33 U.S.C. § 1321(b)(6) and (b)(3) or any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This determination includes discharges of oil that (1) violate applicable water quality standards, (2) cause a film, sheen, or discoloration of the surface of the water or the adjoining shoreline, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or the adjoining shoreline, 40 C.F.R. § 110.3 and the failure to prepare and implement an SPCC plan, as required by 40 C.F.R. § 112.3. This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates a crude oil production facility, Dinsdale 1-3, located in Stark County, North Dakota.

Respondent admits that on or about November 9, 2005, its Dinsdale 1-3 facility discharged approximately 1 barrel (42 gallons) of crude oil into or upon the Heart River and/or its adjoining shorelines. The Heart River is a perennial river which flows to Lake Tschida.

Respondent's discharge from its facility caused a sheen upon, or discoloration of, or caused a sludge or emulsion to be deposited on the surface of the Heart River and/or its adjoining shoreline.

Respondent's discharge constitutes a violation of Section 311 (b)(3) of the Act.

Respondent admits its facility is subject to the SPCC regulations.

Respondent admits that it failed to prepare and implement an SPCC Plan for its Dinsdale 1-3 facility in accordance with 40 C.F.R. § 112.7, 112.9 and 112.10.

Respondent agrees to correct the cited violations of 40 C.F.R. § 112.7, 112.9 and 112.10 on the attached list within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

Respondent agrees to submit a revised copy of the SPCC Plan for its Dinsdale 1-3 facility to EPA for its review and approval.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives their right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership

or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

A signed copy of this Agreement shall be sent to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent consents and agrees to the assessment of a civil penalty of $1,450.00, $500.00 for the discharge of oil in violation of Section 311(b)(3) of the Act and $950.00 for violations of Section 311(j) of the Act, which, shall be paid no later than 30 days after the effective date of the Final Order by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF – 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer $1,450.00 to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent states, under penalty of perjury, that they have (1) investigated the cause of the spill, (2) cleaned up the spill pursuant to federal requirements, (3) taken corrective actions to prevent future spills, and (4) Respondent will revise, implement, and maintain an SPCC plan in accordance with 40 C.F.R. § 112.7, 112.9 and 112.10. Respondent's cost of corrective actions and measures to achieve compliance to date has been $___ $5,000.00 .

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance or has not cleaned up the discharged oil as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Office of Enforcement Compliance and Environmental Justice, Complainant.

By: Elisabeth Evans Date: 9/20/06

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Kerr –McGee Oil & Gas Onshore LP, Respondent.

By: _____ Date: Sept 19, 2006

Name: Bart Boudreaux

Title: Director Northern Area

List of SPCC Violations
Kerr-McGee Oil & Gas Onshore LP
Dinsdale 1-3 and 2-4

40 C.F.R. § 112.3:

Failure to prepare and implement an SPCC Plan in accordance with 40 C.F.R. § 112.7, 112.9 and 112.10.

Specific violations found during review of the Plan are:

Plan not amended due to facility changes in violation of 40 C.F.R. § 112.5(b). The Plan is attributed to Westport Oil and Gas Company, Inc.

Plan does not follow the sequence of the rule nor have a cross reference in violation of 40 C.F.R. § 112.7. Also there are inaccurate regulatory citations.

Inadequate discussion of deviations from requirements in violation of 40 C.F.R. § 112.7(a)(2). Plan does not provide adequate reason for lack of containment for truck loading/unloading area.

Plan has inadequate discussion of discharge prevention measures and controls in violation of 40 C.F.R. § 112.7(a)(3)(ii) and (iii).

Inadequate procedures for discovery, response and cleanup of discharges in violation of 40 C.F.R. § 112.7(a)(3)(iv).

Incorrect information regarding discharge reporting requirements and discharge procedures not organized for use in an emergency in violation of 40 C.F.R. § 112.7(a)(5).

Inadquate discharge prediction in violation of 40 C.F.R. § 112.7(b). There are no rates of flow for different types of potential equipment failures.

Contingency Plan does not meet requirements of Part 109 in violation of 40 C.F.R. § 112.7(d)(1).

There is no management commitment of resources to respond to and clean up a harmful discharge of oil in violation of 40 C.F.R. § 112.7(d)(2).

Written procedures for inspections do not contain all required inspections and does not provide for records to be signed and maintained for three years in violation of 40 C.F.R. § 112.7(e).

No provision for conducting catastrophic failure evaluation in violation of 40 C.F.R. § 112.7(i).

No discussion regarding removing accumulated oil from field drainage ditches, road ditches, and oil traps, sumps or skimmers in violation of 40 C.F.R. § 112.9(b)(2).

Inadequate discussion of secondary containment for bulk containers in violation of 40 C.F.R. § 112.9(c)(2). There are no volume calculations.

No procedures to inspect foundations and supports of bulk containers in violation of 40 C.F.R. § 112.9(c)(3).

No discussion of oil drilling and workover operations in violation of 40 C.F.R. § 112.10. If company hires contractors, then Plan should so state and indicate contractors will be required to have their own SPCC Plan.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT and ORDER TO SHOW CAUSE** in the matter **KERR-MCGEE OIL & GAS ONSHORE LP., KOESTER 13, 14, 23-33 FACILITY; DINSDALE 1-3 FACILITY; PEPPLER 3-36 FACILITY; DOCKET NOs.: CWA-08-2006-0041, 42 AND 43** were filed with the Regional Hearing Clerk on September 29, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David Janik, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and telefaxed on September 29, 2006, to:

Mr. Jim Kleckner, Vice President
Kerr-McGee Oil & Gas Onshore LP
Rocky Mountain Region
1999 Broadway, Suite 3700
Denver, CO 80202
Telefax: 303-296-3601

And hand-carried to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency – Region 8
999 18th Street, Suite 300 (8RC)
Denver, CO 80202

September 29, 2006

Tina Artemis
Regional Hearing Clerk